



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,756	01/27/2004	Robert James Salmi	1370.065US1	1941
21186 7590 01/15/2009 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER				
DAILEY, THOMAS J				
ART UNIT		PAPER NUMBER		
2452				
MAIL DATE		DELIVERY MODE		
01/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/765,756

Applicant(s)

SALMI ET AL.

Examiner

Thomas J. Dailey

Art Unit

2452

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-132 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-132 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Claims 1-132 are pending.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-50, drawn to computer-to-computer data routing, classified in class 709, subclass 238.
 - II. Claims 51-77 and 121-128, drawn to network resource allocating, classified in class 709, subclass 224.
 - III. Claims 78-89 drawn to congestion avoidance, classified in class 709, subclass 235.
 - IV. Claims 90-108 drawn to reconfiguring network computer configurations, classified in class 709, subclass 221.
 - V. Claims 109-120 drawn to computer network monitoring, classified class 709, subclass 224
 - VI. Claims 129-132 drawn to computer network managing, classified in class 709, subclass 223.
3. The inventions are independent or distinct, each from the other for being combination/sub combinations and/or for being mutually exclusive.
 4. **Regarding the restriction of Inventions I and II.**

5. Inventions I and II are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)).

6. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the limitations of "parameterizing a routing policy" (e.g. claim 1, line 2) and "applying the parameterized-routing policy to a route" (e.g. claim 1, line 3) are not required by invention II. Further, the subcombination has separate utility such as applying a routing policy to a network to control computer to computer data routing - this feature is not suggested or required by the other claims.

7. The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or

nonstatutory double patenting rejections over the claims of the instant application.

- 8. Regarding the restriction of Invention I vs. Invention III vs. Invention IV vs. Invention V vs. VI and Invention II vs. Invention III vs. Invention IV vs. Invention V vs. VI.**
9. Inventions I, III, IV, V, and VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable.
10. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the limitations of "parameterizing a routing policy" (e.g. claim 1, line 2) and "applying the parameterized-routing policy to a route" (e.g. claim 1, line 3) are not required by invention III, IV, V, or VI. Further, invention I has separate utility as parameterizing and applying a routing policy to a network to control computer to computer data routing; invention III has separate utility such as measuring characteristics available to a system; invention IV has separate utility such as evaluating configuration files to determine relationships and expressing relationships as mathematical functions; invention V has separate utility such as applying event triggers to a received route; invention VI has separate utility such as decoupling data items from actions associated with the data items. See MPEP § 806.05(d).

11. Inventions II, III, IV, and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable.
12. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the limitations of "performing a policy translation..." (e.g. claim 51, lines 2-3) and "verifying attribute-operator pairings..." (e.g. claim 51, lines 4-5) are not required by invention III, IV, V, or VI. Further, invention II has separate utility such as performing a policy translation to generate an internal-policy representation and verifying the translation; invention III has separate utility such as measuring characteristics available to a system; invention IV has separate utility such as evaluating configuration files to determine relationships and expressing relationships as mathematical functions; invention V has separate utility such as applying event triggers to a received route; invention VI has separate utility such as decoupling data items from actions associated with the data items. See MPEP § 806.05(d).
13. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that

Art Unit: 2452

all claims are generic is considered nonresponsive unless accompanied by an election.

14. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

15. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

16. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

17. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II, III, IV, V, and VI restriction for examination purposes as indicated is proper.

18. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.
20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2452

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. J. D./

Examiner, Art Unit 2452

/Kenny S Lin/

Primary Examiner, Art Unit 2452